

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

)	
In re:)	Chapter 11
)	
AVAYA INC., <i>et al.</i> , ¹)	Case No. 23-90088 (DRJ)
)	
Debtors.)	(Joint Administration Requested)
)	(Emergency Hearing Requested)

**DEBTORS’ EMERGENCY MOTION FOR
ENTRY OF AN ORDER (I) AUTHORIZING
THE DEBTORS TO (A) CONTINUE INSURANCE
COVERAGE ENTERED INTO PREPETITION AND
SATISFY PREPETITION OBLIGATIONS RELATED THERETO,
(B) RENEW, AMEND, SUPPLEMENT, EXTEND, OR PURCHASE INSURANCE
POLICIES, (C) CONTINUE TO PAY BROKERAGE FEES, AND (D) MAINTAIN
THE SURETY BOND PROGRAM, AND (II) GRANTING RELATED RELIEF**

Emergency relief has been requested. Relief is requested not later than 9:00 a.m. (prevailing Central Time) on February 15, 2023.

If you object to the relief requested or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set, or file a written response prior to the date that relief is requested in the preceding paragraph. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

A hearing will be conducted on this matter on February 15, 2023, at 9:00 a.m. (prevailing Central Time) in Courtroom 400, 4th floor, 515 Rusk Street, Houston, Texas 77002. Participation at the hearing will only be permitted by an audio and video connection.

Audio communication will be by use of the Court’s dial-in facility. You may access the facility at (832) 917-1510. Once connected, you will be asked to enter the conference room number. Judge Jones’s conference room number is 205691. Video communication will be by use of the GoToMeeting platform. Connect via the free GoToMeeting application or click the link on Judge Jones’s homepage. The meeting code is “Judge Jones”. Click the settings icon in the upper right corner and enter your name under the personal information setting.

Hearing appearances must be made electronically in advance of both electronic and in-person hearings. To make your appearance, click the “Electronic Appearance”

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ proposed claims and noticing agent at <http://www.kccllc.net/avaya>. The location of Debtor Avaya Inc.’s principal place of business and the Debtors’ service address in these chapter 11 cases is 350 Mount Kemble Avenue, Morristown, New Jersey 07960.



link on Judge Jones’s homepage. Select the case name, complete the required fields and click “Submit” to complete your appearance.

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) state the following in support of this motion (this “Motion”):²

Relief Requested

1. The Debtors seek entry of an order, substantially in the attached form (the “Order”), (a) authorizing the Debtors to (i) continue insurance coverage entered into prepetition and satisfy prepetition obligations related thereto in the ordinary course of business,³ (ii) renew, amend, supplement, extend, or purchase insurance coverage in the ordinary course of business on a postpetition basis, (iii) satisfy payment of prepetition obligations on account of, and continue to pay, Brokerage Fees (as defined herein) in the ordinary course, (iv) maintain the Surety Bond Program (as defined herein) on an uninterrupted basis and satisfy related prepetition obligations in the ordinary course of business; and (b) granting related relief.

Jurisdiction and Venue

2. The United States Bankruptcy Court for the Southern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). The Debtors confirm their consent to the entry of a final order by the Court.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

² The Debtors, together with their non-Debtor affiliates (collectively, “Avaya” or the “Company”), are a leading provider of mission-critical, real-time communication applications. The facts and circumstances supporting this Motion are set forth in the *Declaration of Eric Koza, Chief Restructuring Officer of Avaya Holdings Corp. and Certain of Its Affiliates and Subsidiaries, in Support of the Debtors’ Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed contemporaneously with the filing of this Motion and incorporated by reference herein. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration.

³ Nothing herein shall be deemed an admission of any payments due or past due under or related to any of the Insurance Policies (as defined herein).

4. The bases for the relief requested herein are sections 105(a), 363(b), 364(c), 503, 1107(a), and 1108 of title 11 of the United States Code (the “Bankruptcy Code”), rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rules 4002-1 and 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “Bankruptcy Local Rules”).

Background

5. On the date hereof (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

6. The Debtors have filed a motion requesting joint administration of these Chapter 11 Cases pursuant to Bankruptcy Rule 1015(b). The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these Chapter 11 Cases and no official committees have been appointed or designated.

Insurance Policies and Related Payment Obligations

7. In the ordinary course of business, the Debtors maintain sixty-eight insurance policies that are administered by forty insurance carriers (the “Insurance Carriers”). These policies provide coverage for both general and commercial business risks, including, but not limited to, coverage for the Debtors’ directors’ and officers’ liability, errors and omissions liability, commercial crime, fiduciary liability, general liability, business automobile, umbrella liability, foreign commercial liability, employment practices liability, and global property liability (each,

an “Insurance Policy,” and collectively, the “Insurance Policies”).⁴ A schedule of the Insurance Policies is attached as Exhibit 1 to the Order, which is incorporated herein by reference.⁵

8. Continuation and renewal of the Insurance Policies and entry into new insurance policies is essential to preserving the value of the Debtors’ businesses, properties, and assets. In many cases, coverage provided by the Insurance Policies is required by the regulations, laws, and contracts that govern the Debtors’ commercial activities, including the Bankruptcy Code and the requirements of the United States Trustee for Region 7 as provided in the *Operating Guidelines and Reporting Requirements for Debtors in Possession and Trustees* (the “U.S. Trustee Guidelines”) that a debtor maintain adequate coverage given the circumstances of its chapter 11 case. The Debtors seek authorization to maintain the existing Insurance Policies, pay any prepetition obligations related thereto, and to renew, supplement, or enter into new Insurance Policies in the ordinary course of business on a postpetition basis consistent with past practice.

I. Insurance Premiums.

9. In the ordinary course of business, the Debtors pay most premium obligations associated with their Insurance Policies (the “Insurance Premiums”) through the Insurance Brokers (as defined herein). The Debtors do not currently finance any of their Insurance Premium obligations. Instead, the Debtors generally prepay all of the Insurance Premiums associated with

⁴ The Debtors do not seek authority to maintain workers’ compensation coverage and to pay prepetition amounts related thereto under this Motion, but rather request such authority as part of the *Debtors’ Emergency Motion for Entry of an Order (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses, and (B) Continue Employee Benefits Programs and (II) Granting Related Relief* (the “Wages Motion”) filed contemporaneously herewith.

⁵ The descriptions of the Insurance Policies set forth in this Motion, including on Exhibit 1 to the Order, constitute a summary only. The actual terms of the Insurance Policies and related agreements will govern in the event of any inconsistency with the descriptions in this Motion. The Debtors request authority to honor existing Insurance Policies and renew Insurance Policies, as applicable, regardless of whether the Debtors inadvertently failed to include a particular Insurance Policy on Exhibit 1 to the Order, and any such omitted Insurance Policy is hereby included in the defined term “Insurance Policies” as used herein and in the Order.

the Insurance Policies on or around the start of each policy period. Most of the Insurance Policies are one year in length (although certain policies may be longer than one year based on market conditions and availability at the time) and renew at various times throughout the year.

10. The aggregate annual amount of the Insurance Premiums for the Insurance Policies, not including applicable taxes and surcharges, deductibles, brokerage and consulting fees, or commissions, is approximately \$7.5 million. As of the Petition Date, the Debtors do not believe they owe any outstanding amounts on account of the Insurance Premiums and certain third-party administration fees related to the Insurance Policies. However, out of an abundance of caution, to ensure uninterrupted coverage under the Insurance Policies, the Debtors seek authority to pay any outstanding prepetition Insurance Premiums owed, including any third-party administration fees related thereto, and to continue to honor their obligations under the Insurance Policies as they come due in the ordinary course of business on a postpetition basis consistent with past practice.⁶

II. Deductible Fees and SIRs.

11. Certain of the Insurance Policies require the Debtors to pay a per-incident deductible (collectively, the “Deductibles”). Generally, if a claim is made against the Debtors’ Insurance Policies, the Debtors’ third-party administrator or applicable Insurance Carrier will administer the claim and make any payments in connection therewith. The Debtors then pay the Deductibles to the third-party administrator or Insurance Carrier on a monthly basis (the “Deductible Fees”).

⁶ In addition, the Debtors conduct an annual actuarial review to determine and confirm accounting reserves for auto liability, general liability, and workers’ compensation claims. The most recent review was finalized and billed on September 30, 2022. Out of an abundance of caution, the Debtors submit that the relief requested in the Order applies to the payment of the annual actuarial review in the ordinary course of business.

12. Alternatively, certain of the Debtors' policies use a combination of the Deductibles and self-insured retentions (the "SIRs"). Under such combined policies, the Debtors make payments to the applicable Insurance Carrier up to the limit of the Deductible and the SIR, and once the claim value is above the Deductible and the SIR amount, the Insurance Carrier will cover remaining costs up to an excess liability limit of \$100 million. If a claim is made against such combined policies, the Insurance Carrier will administer the claim and make payments in connection therewith. The applicable Insurance Carrier conducts a "true-up" at the end of every month and refunds any prepayment overage or bills the Debtors for any shortage. Conversely, any claimant settlements below the Deductible or SIR are treated as an exception and are billed to the Debtors at the time of settlement. The Debtors seek authority to continue the Deductibles and SIRs under the Insurance Policies, including honoring any payment obligations under the Deductibles and SIRs, in the ordinary course of business on a postpetition basis to ensure uninterrupted coverage thereunder.

III. Insurance Brokerage Fees.

13. Additionally, the Debtors obtain their Insurance Policies through their insurance broker, Aon Risk Services West, Inc., and its various affiliates (the "Insurance Broker"). The Insurance Broker assists the Debtors in obtaining comprehensive insurance coverage and evaluating benefit plan offerings, and advises the Debtors with respect to accounting and actuarial methodology. It also helps the Debtors with the procurement and negotiation of the Insurance Policies, enabling the Debtors to obtain the Insurance Policies on advantageous terms and at competitive rates.

14. The Debtors pay the Insurance Broker an annual fee of \$530,000, payable in installments, for its services (the "Brokerage Fees"). As of the Petition Date, the Debtors estimate

that they owe approximately \$910,000 in Brokerage Fees on account of a three-year service agreement with the Insurance Broker. To ensure uninterrupted coverage under the Insurance Policies, the Debtors seek authority to pay any outstanding prepetition Brokerage Fees and to continue to pay Brokerage Fees as they come due in the ordinary course of business on a postpetition basis consistent with past practice.

Surety Bonds and Related Payment Obligations

15. In the ordinary course of business, the Debtors are required by certain applicable statutes, rules, and regulations to provide surety bonds to certain third parties, often governmental units or other public agencies, to secure the Debtors' payment or performance of certain obligations (such provision, the "Surety Bond Program"). These obligations include, among other things: (a) contractors' license and permit obligations; (b) contractors' performance and payment obligations; and (c) customs and excise tax obligations. Failure to provide, maintain, or timely replace the Surety Bonds (as defined herein) may prevent the Debtors from undertaking essential functions related to their operations.

16. Intact Insurance Company and Atlantic Specialty Insurance Company (collectively, the "Sureties") have issued the Debtors' current outstanding surety bonds. As of the Petition Date, the Debtors maintain approximately twenty-four surety bonds in an aggregate bond amount of approximately \$4.7 million (each, a "Surety Bond" and collectively, the "Surety Bonds"). The Debtors' outstanding Surety Bonds are currently arranged by Aon Risk Services West, Inc. (the "Surety Broker"). A schedule of the Surety Bonds is attached as Exhibit 2 to the Order and incorporated herein by reference.⁷

⁷ For the avoidance of doubt, the Debtors request authority to, among other things, pay any premiums due in connection with the Surety Bonds, renew and/or supplement all Surety Bonds, as applicable, and execute any

17. The issuance of a surety bond lessens the risk of the Debtors' nonperformance or nonpayment by providing that the surety will perform or tender payment. Unlike an insurance policy, if a surety incurs a loss on a surety bond, it is entitled to recover the full amount of that loss from the principal. To continue their business operations during the reorganization process, the Debtors must be able to provide financial assurance to state governments, regulatory agencies, and other third parties. In turn, the Debtors must be able to maintain the existing Surety Bond Program, including paying the Surety Premiums (as defined below) and providing collateral, renewing, or potentially acquiring additional bonding capacity as needed in the ordinary course of business, and executing other agreements, such as letters of credit, as needed, in connection with the Surety Bond Program. Failing to continue the Surety Bond Program will prevent the Debtors from undertaking essential functions related to their operations.

18. In the ordinary course of business, the Debtors make premium payments to their Surety Broker on account of the Surety Bonds (the "Surety Premiums") on an annual basis on or about the renewal date of each Surety Bond. The Debtors pay such Surety Premiums directly to the Surety Broker. The Debtors have paid approximately \$152,000 on account of the Surety Premiums for the existing Surety Bonds.

19. As of the Petition Date, the Debtors do not believe they owe any outstanding amounts on account of the Surety Premiums. However, out of an abundance of caution, to ensure uninterrupted coverage under the Surety Bond Program, the Debtors seek authority to honor any prepetition Surety Premiums owed and to pay any Surety Premiums that may arise on a postpetition basis in the ordinary course of business consistent with past practice.

agreements ancillary to all Surety Bonds, as applicable, notwithstanding any failure of the Debtors to include a particular surety bond on Exhibit 2 in the Order.

20. In total, the Debtors owe approximately \$910,000 in prepetition Insurance Premiums, Deductible Fees, Brokerage Fees, and Surety Premiums, as detailed below:

Insurance Category	Approximate Amount Due Prepetition
Premiums	\$0
Brokerage Fees	\$910,000
Surety Premiums	\$0
Total	\$910,000

Basis for Relief

I. Continuation of the Insurance Policies Is Required by the Bankruptcy Code and U.S. Trustee Guidelines.

21. Section 1112(b)(4)(C) of the Bankruptcy Code provides that “failure to maintain appropriate insurance that poses a risk to the estate or to the public” is “cause” for mandatory conversion or dismissal of a chapter 11 case. In addition, in many instances, the coverage of the Insurance Policies is required by various state and federal regulations, laws, certain credit agreements, and contracts that govern the Debtors’ commercial activities.

22. To ensure that the Debtors comply with section 1112(b)(4)(C) of the Bankruptcy Code and applicable state and federal regulations, the Debtors believe it is essential to their estates that they (a) maintain, and continue to make all payments required under, the Insurance Policies, and (b) have the authority to supplement, amend, extend, renew, or replace the Insurance Policies as needed, in the ordinary course of business without further order from the Court.

II. Continuing the Insurance Policies and the Surety Bond Program and Paying Obligations Thereunder in the Ordinary Course of Business Is Warranted.

23. In authorizing payments of prepetition obligations, courts have relied on several legal theories rooted in sections 105(a), 363(b), 503, and 1107(a) of the Bankruptcy Code. Pursuant to these sections of the Bankruptcy Code, the Court may authorize the Debtors to pay any prepetition amounts due on account of the Insurance Policies, and to maintain the Insurance

Policies and the Surety Bond Program, including renewing or entering into new policies and surety bonds on a postpetition basis, because the relief requested is consistent with the value preservation policy of chapter 11.

24. Several courts, including in the Fifth Circuit, have recognized that it is appropriate to authorize the payment of prepetition obligations where necessary to protect and preserve the estate, including an operating business's going-concern value. *See, e.g., In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002); *see also In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) ("The ability of a Bankruptcy Court to authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept."); *Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 398 (S.D.N.Y. 1983) (affirming bankruptcy court order authorizing payments by debtor in possession to prepetition creditors because payments were essential to the debtor in possession's survival).

25. Section 363(b) of the Bankruptcy Code permits a debtor, subject to court approval, to pay prepetition obligations where a sound business purpose exists for doing so. *See Ionosphere Clubs*, 98 B.R. at 175 (noting that section 363(b) of the Bankruptcy Code provides "broad flexibility" to authorize a debtor to honor prepetition claims where supported by an appropriate business justification). In addition, under section 1107(a) of the Bankruptcy Code, a debtor in possession has, among other things, the "implied duty of the debtor in possession to 'protect and preserve the estate, including an operating business' going-concern value." *In re CEI Roofing, Inc.*, 315 B.R. 50, 59 (Bankr. N.D. Tex. 2004) (quoting *CoServ*, 273 B.R. at 497).

26. Further, the Court may authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code, which codifies the inherent equitable powers of the bankruptcy court and empowers the bankruptcy court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” This Court’s power under section 105(a) of the Bankruptcy Code to authorize payment of prepetition obligations is popularly referred to as the “necessity of payment” rule or the “doctrine of necessity” and has long been recognized as precedent within the Fifth Circuit. *See CoServ*, 273 B.R. at 492–93. Satisfying possible outstanding or future obligations related to the Insurance Policies, the Brokerage Fees, and the Surety Bond Program is warranted under the doctrine of necessity.

27. Here, the Debtors seek to continue, renew, amend, supplement, and extend their existing Insurance Policies and the Surety Bond Program, purchase new policies and coverage, and issue letters of credit in the ordinary course of business on a postpetition basis consistent with past practice. Related to that process, the Debtors believe that failure to timely honor any outstanding prepetition obligations on account of the Insurance Policies and the Surety Bond Program could negatively affect the Debtors’ ability to enter into such amendments, supplements, extensions, or new policies and coverage. Continuation of the Insurance Policies and the Surety Bond Program is essential to preserving the value of the Debtors’ assets and minimizing exposure to risk during the pendency of these Chapter 11 Cases. Therefore, the Debtors should be authorized to pay any prepetition obligations related thereto and to renew, supplement, purchase, or enter into new insurance or surety bond coverage, including letters of credit, in the ordinary course of business on a postpetition basis consistent with past practice.

III. To the Extent the Court Determines that the Surety Bonds are a Secured Extension of Credit, Relief is Appropriate under Section 364 of the Bankruptcy Code.

28. Under section 364(c) of the Bankruptcy Code, a debtor may obtain unsecured credit in the ordinary course of business or obtain secured credit (a) with priority over administrative expenses, (b) secured by a lien on unencumbered estate assets, or (c) secured by a junior lien on previously encumbered assets. 11 U.S.C. § 364(c). To satisfy the requirements of section 364(c) of the Bankruptcy Code, a debtor need only demonstrate “by a good faith effort that credit was not available” to the debtor on an unsecured or administrative expense basis. *Bray v. Shenandoah Fed. Savs. & Loan Ass’n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986). Given the Debtors’ current financial circumstances, the Debtors may not be able to obtain financial accommodations comparable to those offered by the Surety Broker on an unsecured basis or administrative expense basis. To the extent a Surety Bond is deemed an extension of credit, section 364 of the Bankruptcy Code provides the Debtor ample authority to renew existing Surety Bonds and procure new ones, whether on an unsecured basis or, if necessary, on a secured basis.

29. Continuing the Surety Bond Program is necessary to maintain the Debtors’ current business operations. As described above, the Debtors are required to provide surety bonds or other forms of credit support to certain third parties, often governmental units or other public agencies, to secure the payment or performance of certain obligations. The Debtors therefore seek authority to furnish the Sureties (or any new provider of Surety Bonds) with collateral or new forms of credit support with respect to the Debtors’ existing Surety Bonds, Surety Bond renewals, or any new Surety Bonds.

Emergency Consideration

30. The Debtors request emergency consideration of this Motion pursuant to Bankruptcy Rule 6003, which empowers a court to grant relief within the first twenty-one days

after the commencement of a chapter 11 case “to the extent that relief is necessary to avoid immediate and irreparable harm.” An immediate and orderly transition into chapter 11 is critical to the viability of the Debtors’ operations. Failure to receive the requested relief during the first twenty-one days of these Chapter 11 Cases would imperil the Debtors’ restructuring and cause irreparable harm. The Debtors have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 and request that the Court approve the relief requested in this Motion on an emergency basis.

Processing of Checks and Electronic Fund Transfers Should Be Authorized

31. The Debtors have sufficient funds to pay the amounts described herein in the ordinary course of business by virtue of expected cash flows from ongoing business operations and anticipated access to cash collateral and debtor in possession financing. Under the Debtors’ existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to an authorized payment in respect of the relief requested herein. Checks or wire transfer requests that are not related to authorized payments will not be honored inadvertently. The Debtors request that the Court authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested herein.

Waiver of Bankruptcy Rule 6004(a) and 6004(h)

32. The Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the fourteen-day stay period under Bankruptcy Rule 6004(h).

Reservation of Rights

33. Nothing contained herein or any actions taken pursuant to such relief requested is intended or shall be construed as: (a) an admission as to the amount of, basis for, or validity of

any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion or any order granting the relief requested by this Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in this Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' or any other party in interest's rights to subsequently dispute such claim.

Notice

34. The Debtors have provided notice of this Motion to the following parties or their respective counsel: (a) the U.S. Trustee for the Southern District of Texas; (b) the holders of the thirty largest unsecured claims against the Debtors (on a consolidated basis); (c) counsel to the Akin Ad Hoc Group; (d) counsel to the PW Ad Hoc Group; (e) the Prepetition ABL Agent and counsel thereto; (f) the Prepetition Term Loan Agent and counsel thereto; (g) the 6.125% Senior Secured First Lien Notes Trustee and counsel thereto; (h) the 8.00% Exchangeable Senior Secured

Notes Trustee and counsel thereto; (i) the 2.25% Convertible Notes Trustee and counsel thereto; (j) counsel to the DIP Term Loan Agent; (k) the proposed DIP ABL Agent and counsel thereto; (l) the Office of the United States Attorney for the Southern District of Texas; (m) the state attorneys general for states in which the Debtors conduct business; (n) the Internal Revenue Service; (o) the Securities and Exchange Commission; (p) the Environmental Protection Agency; (q) other governmental agencies having a regulatory or statutory interest in these cases; (r) the Insurance Carriers; (s) the Insurance Brokers; (t) the Sureties; (u) the Surety Broker; and (v) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, no other or further notice is required.

The Debtors request that the Court enter the Order granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Houston, Texas
Dated: February 14, 2023

/s/ Matthew D. Cavanaugh

JACKSON WALKER LLP

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*Proposed Co-Counsel to the Debtors
and Debtors in Possession*

*Proposed Co-Counsel to the Debtors
and Debtors in Possession*

Certificate of Accuracy

I certify that the foregoing statements are true and accurate to the best of my knowledge. This statement is being made pursuant to Bankruptcy Local Rule 9013-1(i).

/s/ Matthew D. Cavanaugh

Matthew D. Cavanaugh

Certificate of Service

I certify that on February 14, 2023, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Matthew D. Cavanaugh

Matthew D. Cavanaugh

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

<p>In re:</p> <p>AVAYA INC., <i>et al.</i>,¹</p> <p style="text-align: center;">Debtors.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Chapter 11</p> <p>Case No. 23-90088 (DRJ)</p> <p>(Joint Administration Requested)</p> <p>Re: Docket No. ___</p>
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**ORDER (I) AUTHORIZING THE DEBTORS TO
(A) CONTINUE INSURANCE COVERAGE ENTERED
INTO PREPETITION AND SATISFY PREPETITION
OBLIGATIONS RELATED THERETO, (B) RENEW, AMEND,
SUPPLEMENT, EXTEND, OR PURCHASE INSURANCE POLICIES,
(C) CONTINUE TO PAY BROKERAGE FEES, AND (D) MAINTAIN
THE SURETY BOND PROGRAM, AND (II) GRANTING RELATED RELIEF**

Upon the emergency motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”) (a) authorizing the Debtors to (i) continue insurance coverage entered into prepetition and satisfy prepetition obligations related thereto in the ordinary course of business, (ii) renew, amend, supplement, extend, or purchase insurance coverage in the ordinary course of business on a postpetition basis, (iii) satisfy payment of prepetition obligations on account of and continue to pay Brokerage Fees, and (iv) maintain the Surety Bond Program on an uninterrupted basis; and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that it may

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ proposed claims and noticing agent at <http://www.kcellc.net/avaya>. The location of Debtor Avaya Inc.’s principal place of business and the Debtors’ service address in these chapter 11 cases is 350 Mount Kemble Avenue, Morristown, New Jersey 07960.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court, if any; and this Court having determined that the legal and factual bases set forth in support of the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Debtors are authorized, but not directed, to continue the Insurance Policies including, without limitation, the Insurance Policies identified on **Exhibit 1** attached hereto and any related agreements, and to pay any prepetition or postpetition obligations related to the Insurance Policies, including the Insurance Premiums, and any amounts owed to the Insurance Carriers and the Insurance Broker in the amounts and categories described in the Motion.

2. The Debtors, upon consultation with each of the advisors to the Akin Ad Hoc Group and the PW Ad Hoc Group, are authorized, but not directed, to renew, amend, supplement, and/or extend the Insurance Policies, and to purchase new insurance policies in the ordinary course of business, and to execute other agreements in connection therewith, including letters of credit.

3. The Debtors are authorized, but not directed, to pay the prepetition Brokerage Fees in the amounts described in the Motion and to continue to pay Brokerage Fees on a postpetition basis in the ordinary course.

4. The Debtors are authorized, but not directed, to maintain the Surety Bond Program without interruption, including, without limitation, payment of the Surety Premiums and any other agreements related to the Surety Bond Program, and to pay any prepetition or postpetition obligations related to the Surety Bond Program, in each case in the ordinary course of business and consistent with prepetition practices.

5. The Debtors, upon consultation with each of the advisors to the Akin Ad Hoc Group and the PW Ad Hoc Group, are authorized to renew, amend, supplement, and/or extend the Surety Bonds, including, without limitation, the Surety Bonds identified on **Exhibit 2** attached hereto, or to purchase new Surety Bonds, and to execute other agreements, such as letters of credit, in connection with the Surety Bond Program in each case in the ordinary course of business and consistent with prepetition practices.

6. The Debtors are not authorized by this Order to take any action with respect to a surety bond that would have the effect of transforming a prepetition undersecured or unsecured Surety Bond obligation into a postpetition or secured obligation. Such relief may be sought by separate motion, which may be heard on an expedited basis.

7. The Debtors shall notify the U.S. Trustee, the Akin Ad Hoc Group, the PW Ad Hoc Group, and any statutory committee appointed in these cases if the Debtors renew, amend, supplement, extend, terminate, replace, increase, or decrease existing insurance and surety coverage or change insurance or surety carriers, enter into any premium financing agreements, or obtain additional insurance or surety coverage.

8. Nothing in this Order authorizes the Debtors to accelerate any payments not otherwise due.

9. Notwithstanding anything to the contrary in this Order, nothing herein shall be deemed to authorize the payment by the Debtors of the prepetition Deductibles and SIRs. The Debtors' right to seek relief from this prohibition upon further notice and hearing, including on an emergency basis, are reserved.

10. The Debtors shall maintain a matrix or schedule of payments made pursuant to this Order, including the following information: (a) the names of the payee; (b) the date and amount of the payment; (c) the category or type of payment, as further described and classified in the Motion. The Debtors shall provide a copy of such matrix or schedule to the U.S. Trustee, any statutory committee appointed in these Chapter 11 Cases, the PW Ad Hoc Group, and the Akin Ad Hoc Group within ten days of the end of each calendar month beginning upon entry of this Order.

11. Notwithstanding the relief granted herein and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in the Motion or any order granting the relief requested by the Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other

applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

12. The banks and financial institutions on which checks were drawn or electronic funds transfer requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Order.

13. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these Chapter 11 Cases with respect to prepetition amounts owed in connection with the relief granted herein.

14. Notwithstanding anything to the contrary in this Order, any payment made or to be made hereunder, and any authorization herein, shall be subject to the requirements (if any) imposed on the Debtors under any order(s) of this Court approving the postpetition secured debtor-in-possession financing facility and the use of cash collateral (any such order, a "Financing Order"), including any documentation with respect to such financing and any budget in connection with such Financing Order. In the event of any conflict between the terms of this Order and a Financing Order, the terms of the applicable Financing Order shall control (solely to the extent of such conflict).

15. Notwithstanding the relief granted herein or any actions taken hereunder, nothing contained in this Order shall create any rights in favor of, or enhance the status of any claim held by, any person to whom any obligations under the Insurance Policies or Surety Bonds are owed.

16. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

17. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a), and the Bankruptcy Local Rules are satisfied by such notice.

18. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

19. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order.

20. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: _____, 2023

DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1**Insurance Policies¹**

<u>Type of Policy Coverage</u>	<u>Insurance Carrier(s)</u>	<u>Policy Number</u>	<u>Policy Term</u>	<u>Approximate Annualized Gross Premium²</u>
Crime	Beazley US	V22773220501	3/31/2022 – 3/31/2023	\$35,560.60
Crime (Excess)	Zurich American Insurance Company	FID050799004	3/31/2022 – 3/31/2023	\$60,283.45
	AXIS	P00100012660403	3/31/2022 – 3/31/2023	
D&O Liability Go Forward	Berkley	BPRO8077611	3/31/2022 – 3/31/2023	\$2,116,088.14 (All D&O Liability)
	AXA XL	ELU18174622	3/31/2022 – 3/31/2023	
	Markel	MKLM6EL0007947	3/31/2022 – 3/31/2023	
	Sompo	DOX10012266204	3/31/2022 – 3/31/2023	
	Beazley	V213DB220501	3/31/2022 – 3/31/2023	
	Old Republic	ORPRO12101860	3/31/2022 – 3/31/2023	
	Starr	1000623272221	3/31/2022 – 3/31/2023	
	Argo	MLX76031704	3/31/2022 – 3/31/2023	
	Swiss Re	DOE200135104	3/31/2022 – 3/31/2023	
	CAN	596853951	3/31/2022 – 3/31/2023	
	Chubb CODA BDA	21827002A	3/31/2022 – 3/31/2023	
	Everest BDA	SCBEX00038221	3/31/2022 – 3/31/2023	
AWAC BDA	C070169002	3/31/2022 – 3/31/2023		
Navigators UK	FSGDO2200081	3/31/2022 – 3/31/2023		

¹ The Debtors request authority to honor and renew existing Insurance Policies, as applicable, regardless of whether the Debtors inadvertently failed to include a particular Insurance Policy herein.

² The annualized Insurance Premium does not include any additional taxes.

Type of Policy Coverage	Insurance Carrier(s)	Policy Number	Policy Term	Approximate Annualized Gross Premium²
	Chubb UK	FSGDO2200082	3/31/2022 – 3/31/2023	
	Beazley UK	FSGDO2200084	3/31/2022 – 3/31/2023	
	Canopus	CUAI061601	3/31/2022 – 3/31/2023	
	Zurich UK	FSGDO2200121	3/31/2022 – 3/31/2023	
	AIG UK	FSGDO2200566	3/31/2022 – 3/31/2023	
D&O Liability Run-Off	US Specialty Ins. Co. (HCC Global)	14-MGU-17-A40257	12/15/2017 – 2023	\$453,534 (All D&O Liability)
	XL Specialty	ELU149281-17	12/15/2017 – 2023	
	Markel	MKLM6EL0002984	12/15/2017 – 2023	
	Endurance	DOX10010915400	12/15/2017 – 2023	
	Beazley	V1E387170101	12/15/2017 – 2023	
	Old Republic	ORPRO39350	12/15/2017 – 2023	
	Berkley	BPRO8026942	12/15/2017 – 2023	
	Argonaut	MLX760250200	12/15/2017 – 2023	
	Lloyds (Hiscox)	FSUSC1700612	12/15/2017 – 2023	
	Lloyds (CV Starr)	FSUSC1700613	12/15/2017 – 2023	
	Lloyds (Navigators)	FSUSC1700623	12/15/2017 – 2023	
	Zurich plc	FSUSC1700611	12/15/2017 – 2023	
D&O Liability Run-Off (Renewed)	Gemini Insurance Co.	BPRO8077611	3/31/2023 – 3/31/2029	\$5,034,813 (All D&O Liability)
	XL Specialty Insurance Co.	ELU18174622	3/31/2023 – 3/31/2029	
	Markel American Insurance Co.	MKLM6EL0007947	3/31/2023 – 3/31/2029	

Type of Policy Coverage	Insurance Carrier(s)	Policy Number	Policy Term	Approximate Annualized Gross Premium²
	Endurance American Specialty Insurance Co.	DOX10012266204	3/31/2023 – 3/31/2029	
	Beazley Insurance Company, Inc.	V213DB220501	3/31/2023 – 3/31/2029	
	Old Republic Insurance Company	ORPRO12101860	3/31/2023 – 3/31/2029	
	Starr Indemnity & Liability Company	1000623272221	3/31/2023 – 3/31/2029	
	Argonaut Insurance Co.	MLX76031704	3/31/2023 – 3/31/2029	
	North American Specialty Insurance Co.	DOE200135104	3/31/2023 – 3/31/2029	
	Continental Casualty Co.	596853951	3/31/2023 – 3/31/2029	
	Lloyd's Syndicate No. 1221	FSGDO2200081	3/31/2023 – 3/31/2029	
	Chubb European Group SE	FSGDO2200082	3/31/2023 – 3/31/2029	
	Lloyd's Syndicate No. 2623	FSGDO2200084	3/31/2023 – 3/31/2029	
	Lloyd's Syndicate No. 4444	CUAI061601	3/31/2023 – 3/31/2029	
Defense Base Act	The Insurance Co. of the State of PA (AIG)	012345352	9/30/2022 – 9/30/2023	\$7,015.50
Domestic Automobile	Zurich American Insurance Company	BAP015816706	9/30/2022 – 9/30/2023	\$148,953
E&O Liability	Lloyds Beazley	W3071E220201	9/30/2022 – 9/30/2023	\$790,500
E&O Liability (Excess)	Arch	NPL006726801	9/30/2022 – 9/30/2023	\$1,924,014.00 (All excess EPL Liability)
	AmTrust AHC	AES121272901	9/30/2022 – 9/30/2023	
	AXA XL	MTE003879410	9/30/2022 – 9/30/2023	
	Zurich	EOC932670509	9/30/2022 – 9/30/2023	

Type of Policy Coverage	Insurance Carrier(s)	Policy Number	Policy Term	Approximate Annualized Gross Premium²
Employment Practices Liability	CNA	652420619	3/31/2022 – 3/31/2023	\$97,750
Employment Practices Liability (Excess)	North Rock Bda	652420619	3/31/2022 – 3/31/2023	\$100,063.00
	Sompo	EPX30005359501	3/31/2022 – 3/31/2023	
	Magna Carta Bda	MCEN208682	3/31/2022 – 3/31/2023	
	Zurich	EPL050836404	3/31/2022 – 3/31/2023	
	Hanseatic Bda	HIPD205233	3/31/2022 – 3/31/2023	
Fiduciary Liability	Euclid	SFD31211995	3/31/2022 – 3/31/2023	\$74,104.06
Fiduciary Liability (Excess)	XL Specialty Insurance Co.	ELU18174522	3/31/2022 – 3/31/2023	\$124,290.38
	Chubb / Ace	DOXG25114942008	3/31/2022 – 3/31/2023	
	Freedom Specialty Insurance Company (Nationwide)	XMF2202445	3/31/2022 – 3/31/2023	
	Zurich	FLC868083803	3/31/2022 – 3/31/2023	
Foreign Casualty Package	The Insurance Co. of the State of PA (AIG)	800279159	9/30/2022 – 9/30/2023	\$288,700.12
		800279160		
		8375093		
		7073322		
General Liability	Zurich American Insurance Company	GLO015816506	9/30/2022 – 9/30/2023	\$13,000
Global Property	AIG	015680518	3/31/2022 – 3/31/2023	\$200,032.27
Umbrella	XL Insurance America, Inc.	US00076703LI22A	9/30/2022 – 9/30/2023	\$170,000
Umbrella (Excess)	AIG	14572405	9/30/2022 – 9/30/2023	\$274,125
	Liberty Insurance	ECA2359941062	9/30/2022 – 9/30/2023	

Type of Policy Coverage	Insurance Carrier(s)	Policy Number	Policy Term	Approximate Annualized Gross Premium²
	Underwriters Inc.			
	Navigators	LA22FXRZ032N5IV	9/30/2022 – 9/30/2023	
	Travelers Property Casualty Company of America	EX7T26423622NF	9/30/2022 – 9/30/2023	
Cargo Stock Throughput	AIG	023550544	3/30/2022 – 3/30/2023	\$158,282
Cargo Stock Throughput (Excess)	Falvey (Lloyd's 1221)	MCFAL3000046	3/30/2022 – 3/30/2023	\$97,980
Special Risk Coverage (KRE)	Hiscox	UKA301435121	3/31/2022 – 3/31/2023	\$28,178.50
Workers' Compensation ³	Zurich American Insurance Company	WC015816606	9/30/2022 – 9/30/2023	\$275,999
	Zurich American Insurance Company	WC015816806	9/30/2022 – 9/30/2023	

³ The Debtors do not seek authority to maintain workers' compensation coverage and to pay prepetition amounts related thereto under this Motion, but rather request such authority as part of the Wages Motion, which was filed concurrently herewith.

Exhibit 2**Surety Bonds¹**

Bond Number	Surety / Issuing Carrier	Principal	Beneficiary	Type of Bond	Bond Term²	Bond Premium
800032667	Atlantic Specialty Insurance Company	Avaya Inc.	State of California	LP	03/01/2020 – 03/01/2023	\$975.00
21C000QNF	Intact Insurance Company	Avaya Inc.	U.S. Customs and Border Protection	CU	05/26/2022 – 05/26/2023	\$750.00
800032662	Atlantic Specialty Insurance Company	Avaya Inc.	State of Iowa	LP	06/30/2020 – 06/30/2023	\$375.00
800032663	Atlantic Specialty Insurance Company	Avaya Inc.	State of New Mexico	LP	06/30/2020 – 06/30/2023	\$390.00
800032664	Atlantic Specialty Insurance Company	Avaya Inc.	State of Oregon	LP	06/30/2020 – 06/30/2023	\$300.00
800032666	Atlantic Specialty Insurance Company	Avaya Inc.	State of Arkansas	LP	06/30/2020 – 06/30/2023	\$390.00
800032670	Atlantic Specialty Insurance Company	Avaya Inc.	City of Albuquerque, New Mexico	LP	06/30/2020 – 06/30/2023	\$260.00

¹ The Debtors request authority to honor and renew existing Surety Bonds, as applicable, regardless of whether the Debtors inadvertently failed to include a particular Surety Bond herein.

² For the avoidance of doubt, all Surety Bonds listed herein remain active as of the Petition Date. Each expiration date herein reflects the billing dates for annual Surety Bonds or the original expected expiration date for projects related thereto.

Bond Number	Surety / Issuing Carrier	Principal	Beneficiary	Type of Bond	Bond Term ²	Bond Premium
800032671	Atlantic Specialty Insurance Company	Avaya Inc.	State of Arizona	LP	06/30/2020 – 06/30/2023	\$260.00
800032672	Atlantic Specialty Insurance Company	Avaya Inc.	City of Springfield, Missouri, Division of Purchases	LP	06/30/2020 – 06/30/2023	\$260.00
800032673	Atlantic Specialty Insurance Company	Avaya Inc.	State of Washington	LP	06/30/2020 – 06/30/2023	\$260.00
800032674	Atlantic Specialty Insurance Company	Avaya Inc.	State of Nevada	LP	06/30/2020 – 06/30/2023	\$1,950.00
800032675	Atlantic Specialty Insurance Company	Avaya Inc.	State of Arizona	LP	06/30/2020 – 06/30/2023	\$780.00
800032676	Atlantic Specialty Insurance Company	Avaya Inc.	Metropolitan Government of Nashville and Davidson County	LP	06/30/2020 – 06/30/2023	\$1,560.00
962021624	Intact Insurance Company	Avaya Canada Corp	Her Majesty in Right of Canada	CU	08/01/2022 – 08/01/2023	\$100.00
200811047	Atlantic Specialty Insurance Company	Avaya Inc.	Bureau of Customs and Border Protection	CU	08/30/2022 – 08/29/2023	\$12,000.00
800111550	Atlantic Specialty Insurance Company	Avaya Inc.	Bureau of Customs and Border Protection	CU	10/30/2022 – 10/30/2023	\$24,000.00
800032679	Atlantic Specialty Insurance Company	Avaya Inc.	Consolidated City of Indianapolis & Unknown 3rd Parties, State of Indiana	LP	12/31/2022 – 12/31/2023	\$150.00

Bond Number	Surety / Issuing Carrier	Principal	Beneficiary	Type of Bond	Bond Term ²	Bond Premium
800032680	Atlantic Specialty Insurance Company	Avaya Inc.	Minnesota Department of Labor and Industry, CCLD Licensing and Certification	LP	03/01/2022 – 03/01/2024	\$694.00
800032681	Atlantic Specialty Insurance Company	Avaya Inc.	Illinois Environmental Protection Agency	PF	06/14/2021 – 06/14/2024	\$28,808.00
800032665	Atlantic Specialty Insurance Company	Avaya Inc.	State of Tennessee	LP	06/30/2021 – 06/30/2024	\$65,000.00
800032677	Atlantic Specialty Insurance Company	Avaya Inc.	Commonwealth of Virginia	LP	08/09/2021 – 08/31/2024	\$3,250.00
800032678	Atlantic Specialty Insurance Company	Avaya Inc.	Port Authority of Allegheny County	PF	09/01/2021 – 09/01/2024	\$7,831.00
800007381	Atlantic Specialty Insurance Company	Avaya Inc.	City of St. Louis Department of Public Safety	LP	09/07/2021 – 09/07/2024	\$650.00
800007389	Atlantic Specialty Insurance Company	Avaya Inc.	St. Louis County, Department of Public Works	LP	10/01/2021 – 10/01/2024	\$650.00